

REMARKS

Applicants would like to once again thank the Examiner for the careful consideration that he has given to the present application. The present application currently has claims 25-30 pending. The application has been carefully reviewed in light of the Office Action. Applicants believe that the claims are patentable over the cited references for at least the reasons set forth below. Applicant respectfully request reconsideration of this application.

Claim Rejections – 35 U.S.C. 103

The Examiner has rejected claims 25 and 28-30 under 35 U.S.C. 103(a) as being unpatentable over applicants admitted prior art in the specification page 1, lines 10-27 and page 2, lines 10-14 in view of Nervig (U.S. Patent No. 3,612,292) and Teter et al. (U.S. Patent No. 6,112,665). Applicants traverse this rejection.

In order to establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). The teaching or suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). However, Applicants do not believe that all of the claimed elements have been disclosed or are suggested by the cited references.

The Examiner has stated that the wall of the Nervig rack is substantially the same as the structure being claimed by Applicants and would therefore be capable of covering and protecting chip sections from being grabbed by a consumer.

Applicants disagree that the combination of the Nervig reference with the Teter reference and Applicants specification provide all of the claimed limitations. Thus, without the presence of all of the claimed limitations, there can be no combination of the references in order to achieve Applicants claimed invention. The question to be answered is not merely whether there is a suggestion to combine the teachings of the prior art references but also whether the teachings themselves provide for all of the claimed limitations. A statement that the illustration of the Nervig rack is substantially the same as Applicants illustrated structure, does not necessitate the conclusion that Nervig teaches that the wall of the rack in fact covers the chip section of a paint

color card. Even if Applicants drawings are the same as drawings provided for in Nervig, Applicants drawing is merely one embodiment of the claimed invention. What is important from a reading of Applicants disclosure is not only the embodiment as shown in Applicants Figure 10, but the necessity that the rack cover a chip section of a color card – and this is precisely what Applicants have expressly disclosed and claimed. In viewing Nervig’s Figure 1, it is not apparent, nor can it be inferred, that such rack could cover a chip section of a color card. The similarity suggested by the Examiner should not prompt a conclusion that Nervig discloses or suggests the claimed rack having a wall that covers a chip section.

Further, teaching or suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure. Neither Nervig nor Teter suggest the claimed combination. The claimed element of a chip section covered by a display rack wall is important not because of any need or advantage taught by Nervig reference or the Teter reference, but rather it is important because of Applicants’ disclosure of a single-color color card and suggested use within a display rack, i.e., a single-color color card with a single chip section. Without Applicants claimed single-color color card with perforated area, there is no need for a rack that includes a wall of any particular features. Thus, Nervig does not disclose or suggest a rack in combination with a color card, let alone a single-color color card.

For the foregoing reasons, as well as the arguments that Applicants have presented in previous responses, Applicants do not believe that the cited references disclose all of the claimed elements of Applicants’ claim 25. Furthermore, it is not obvious to combine the cited references, and thus, Applicants’ claim 25 is not obvious. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending from the independent claim is also nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because Applicants do not believe that claim 25 is obvious in light of the cited prior art, claims 28-30, as well as any other claims depending from claim 25, are also not obvious.

With respect to claims 26 and 27, Applicants traverse this rejection. As Applicants have stated above, independent claim 25 is not obvious and, thus, claims 26 and 27, which depend from claim 25, are also not obvious.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. Applicants appreciate and once again thank the Examiner for his review of the subject application.

Respectfully submitted,
THE SHERWIN-WILLIAMS COMPANY

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By: /Arthi K. Tirey/
Arthi K. Tirey
Attorney for the Applicants
Reg. No. 50,960

The Sherwin-Williams Company
11 Midland Bldg. - Legal Dept.
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115
Phone: (216) 566-3650